

January 29, 2014

Senator Brad Ashford, Chair
Judiciary Committee
P.O. Box 94604
Lincoln, NE 68509-4604

RE: LB 908

Dear Senator Ashford and members of the Judiciary Committee:

Following the passage in 2013 of LB216, the Young Adult Voluntary Services and Support Act, DHHS began preparations to implement the extended services programs now known as Bridge to Independence. Throughout this process DHHS has been fortunate to have the support and collaboration of the Young Adult Voluntary Services and Support Advisory Committee, as well as a number of dedicated individuals and organizations in the child welfare system. We look forward to continuing this collaboration as the program initiates and grows.

I am writing to provide feedback regarding LB908, which attempts to extend guardianships for minors thus addressing the concerns regarding Extended Guardianship Assistance.

Extended Guardianship Assistance

Over the past year, DHHS has voiced concern on many occasions regarding the extended guardianship assistance program established by LB216 (2013). In Nebraska, guardianships of minors terminate when the ward reaches the age of majority. Although LB216 provides funds for guardianship assistance payments to extend beyond the age of 21, it did nothing to extend the legal status of the guardianship beyond age 21. This means that no legal relationship exists between the guardian and the young adult past the ward's 19th birthday, and the former guardian, therefore, has no legal duties or obligations as to the young adult.

LB908 does not appear to adequately resolve the lack of legal relationship. Nebraska guardianship statutes do not allow for a guardianship of a minor to extend beyond the age of majority and LB853 does nothing to change that. The provision on page 19, lines 10-15 attempts to extend guardianships of certain minors beyond age 19 if the ward is eligible for continued guardianship assistance. It does so by making the extension automatic if a guardianship subsidy agreement is entered into by DHHS and the guardian. It offers no opportunity for the young adult to consent, object, or have any opportunity for due process or legal representation. Not only does this present constitutionality issues, but it is in contradiction to the stated purpose of the Young Adult Voluntary Services and Support Act

(Neb. Rev. Stat. § 43-4501 et seq.) to “support former state wards in transitioning to adulthood” and respecting the legal adulthood and autonomy of young adults in the program.

Even if the provision just referenced were appropriate or legally sound, the subsequent provision (page 19, lines 16-22) would seem to counter its effect by stating that the guardian in an extended guardianship has no legal authority or responsibility toward the young adult. In this sense, LB908 would create a guardianship in name only, with no practical or legal effect on the relationship between guardian and young adult.

Unless a legal relationship remains intact, there is no vehicle for disbursement of the extended guardianship assistance. Federal law does not allow the extended guardianship assistance to be paid directly to the young adult. If a former guardian were to receive money under this program, LB908 does not appear to place any legal obligation on the guardian to spend the money for the benefit of the young adult or to give any of the money to the young adult. Likewise, the bill does not give DHHS any legal authority to ensure the money is spent for the benefit of the young adult, nor does it give the young adult an avenue for legal recourse if the money is not spent for his/her benefit.

Additional Concerns

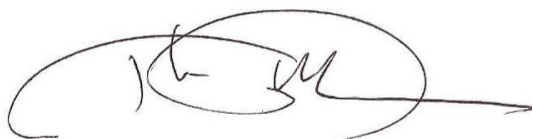
In addition to the issues presented above, DHHS has identified the following issues with LB908:

- Page 3, lines 7-9: This section in the guardianship statutes could create confusion because it pertains only to (3)(a) cases, but the juvenile code appears to grant the Juvenile Court the ability to appoint a guardian in any juvenile case, not just those in subdivision (3)(a) of section 43-247.
- Page 5, lines 5-9: This subsection attempts to define abandonment but uses ambiguous and overly broad language. The section uses the terms “without just cause or excuse,” but does not provide any direction as to what constitutes “just cause” or a “valid” excuse or who is charged with making that determination. The bill also uses the terms love, protection and maintenance, and the opportunity for the display of parental affection for the child. However, it is nearly impossible to define the withholding of love and this could be perceived differently by different individuals and cultures. There is also no definition of parental affection, and this does not take into account cultural practices and family norms.
- Page 16, lines 10-13: This subsection provides that the Department may provide subsidies to adoptive and guardianship families subject to a hearing and court approval. This language appears to create the possibility that a court could order the Department to make subsidy payments to families that would not normally be eligible or in amounts that exceed the typical rates.
- Page 17, line 13: Through a series of statutory cross-references, beginning with the citation to section Neb. Rev. Stat. § 43-1312 on line 13, Section 8 of the bill could be interpreted to apply only to juveniles adjudicated under 43-247(3), (4), or (8) though guardianships are possible regardless of the adjudication type.

- Page 17, line 24: Provides that a juvenile 10 years and older may object to a guardianship, but this conflicts with other guardianship statutes which set an age limit of 14 years old.
- Page 20, Lines 6-8: This provision would require DHHS to adopt regulations in regard to juvenile court's authority to enter guardianship orders. Guardianship orders are under the jurisdiction of the Court, not the Department. The Department has no authority to regulate the judicial branch and it does not appear that there would be any need for regulations if this bill were passed as introduced, so the mandate for DHHS to adopt regulations may be inappropriate.

I greatly appreciate the opportunity to share the above concerns and recommendations.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Pristow', enclosed within a large, loopy oval shape.

Thomas D. Pristow, MSW, ACSW, Director
Division of Children & Family Services
Department of Health and Human Services

Cc: Senator Colby Coash
Senator Amanda McGill